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*Attorney for Defendants Atlantic City Board of Education, former Superintendent Paul A. Spaventa, and current Superintendent Barry Caldwell*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
CAMDEN VICINAGE**

JANE DOE, on behalf of JOHN DOE,  
her minor child,

Plaintiffs,

v.

MARTY SMALL, SR., et al.,

Defendants.

Hon. Joseph H. Rodriguez, U.S.D.J.

Hon. Sharon A. King, U.S.M.J.

Docket No. 1:21-cv-11189-JHR-SAK

**CERTIFICATION OF  
BENJAMIN H. ZIEMAN, ESQ.**

BENJAMIN H. ZIEMAN, ESQ., of full age, hereby certifies and says:

1. I am an attorney employed by the law firm of Anderson & Shah, LLC. I have been retained to represent Defendants, the Atlantic City Board of Education, former Superintendent Paul A. Spaventa, and current Superintendent Barry Caldwell, in the above-captioned matter. In this capacity, I have personal knowledge of the facts set forth below, and I submit this certification in support of Defendants' motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6).

2. Attached as **EXHIBIT A** is a true and correct copy of District Policy 4281 – Inappropriate Staff Conduct, which is publicly available through the Atlantic City Board of Education’s website.

3. Attached as **EXHIBIT B** is a true and correct copy of District Policy 0120 – Authority and Powers, which is publicly available through the Atlantic City Board of Education’s website.

4. I declare under penalty of perjury that the foregoing is true and correct.

ANDERSON & SHAH LLC

Dated: July 8, 2021

By: s/ Benjamin H. Zieman  
Benjamin H. Zieman, Esq.

# **EXHIBIT A**



## Atlantic City Board of Education

[Home](#)

&lt; Prev

Next &gt;

## To Regulation

[Search District Policies](#)[District Policies TOC](#)

## District Policy

**4281- INAPPROPRIATE STAFF CONDUCT**

Section: Support Staff

Date Created: May 2004

Date Edited: December 2012

**4281 INAPPROPRIATE STAFF CONDUCT**

The Board of Education recognizes its responsibility to protect the health, safety and welfare of all pupils within this school district. Furthermore, the Board recognizes there exists a professional responsibility for all school staff to protect a pupil's health, safety and welfare. The Board strongly believes that school staff members have the public's trust and confidence to protect the well-being of all pupils attending the school district.

In support of this Board's strong commitment to the public's trust and confidence of school staff, the Board of Education holds all school staff to the highest level of professional responsibility in their conduct with all pupils. Inappropriate conduct and conduct unbecoming a school staff member will not be tolerated in this school district.

The Board recognizes and appreciates the staff-pupil professional relationship that exists in a school district's educational environment. This Policy has been developed and adopted by this Board to provide guidance and direction to avoid actual and/or the appearance of inappropriate staff conduct and conduct unbecoming a school staff member toward pupils.

School staff's conduct in completing their professional responsibilities shall be appropriate at all times. School staff shall not make inappropriate comments to pupils or about pupils and shall not engage in inappropriate language or expression in the presence of pupils. School staff shall not engage in inappropriate conduct toward or with pupils. School staff shall not engage or seek to be in the presence of a pupil beyond the staff member's professional responsibilities. School staff shall not provide transportation to a pupil in their private vehicle or permit a pupil into their private vehicle unless there is an emergency or a special circumstance that has been approved in advance by the Building Principal/immediate supervisor and the parent/legal guardian.

Inappropriate conduct by a school staff member outside their professional responsibilities may be considered conduct unbecoming a staff member. Therefore, school staff members are advised to be concerned with such conduct which may include, but is not limited to, communications and/or publications using e-mails, text-messaging, social networking sites, or any other medium that is directed and/or available to pupils or for public display.

A school staff member is always expected to maintain a professional relationship with pupils and school staff members shall protect the health, safety and welfare of school pupils. A staff member's conduct will be held to the professional standards established by the New Jersey State Board of Education and the New Jersey Commissioner of Education. Inappropriate conduct or conduct unbecoming a staff member may also include conduct not specifically listed in this Policy, but conduct determined by the New Jersey State Board of Education, the New Jersey Commissioner of Education, an arbitration process, and/or appropriate courts to be inappropriate or conduct unbecoming a school staff member.

School personnel, compensated and uncompensated (volunteers), are required to report to their immediate supervisor or Building Principal any possible violations of this Policy. In the event the report alleges conduct by the Building Principal or the immediate supervisor, the school staff member may report directly to the Superintendent. In addition, school personnel having reasonable cause to believe a pupil has been subjected to child abuse or neglect or acts of child abuse or neglect as defined under N.J.S.A. 9:6-8.10 are required to immediately report to the New Jersey Department of Children and Families in accordance with N.J.A.C. 6A:16-11.1 and inform the Building Principal or immediate supervisor after making such report. However, notice to the Building Principal or designee need not be given when the school staff member believes such notice would likely endanger the referrer or child(ren) involved or when the staff member believes that such disclosure would likely result in retaliation against the child or in discrimination against the referrer with respect to his/her employment.

Reports may be made in writing or with verbal notification. The immediate supervisor or Building Principal will notify the Superintendent of Schools of all reports, including anonymous reports. The Principal or Designee will investigate all reports with a final report to the Superintendent of Schools. The Principal or Designee or the Superintendent may, at any time after receiving a report take such appropriate action as necessary and as provided for in the law. This may include, but is not limited to, notifying law enforcement, notifying the New Jersey Department of Children and Families in accordance with N.J.A.C. 6A:16-11.1 and/or any other measure provided for in the law.

This Policy will be distributed to all school staff and provided to staff members at any time upon request.

N.J.S.A. 18A:28-5 et seq.  
N.J.A.C. 6A:16-11.1

Issued: May 2004  
Revised December 2012  
Adopted: 16 July 2013



# **EXHIBIT B**



## Atlantic City Board of Education

[Home](#)

&lt; Prev

Next &gt;

## To Regulation

[Search District Policies](#)[District Policies TOC](#)

## District Policy

**0120- AUTHORITY AND POWERS**

Section: Bylaws  
Date Created: May 2002  
Date Edited: May 2002

## Authority

The Board of Education is constituted, authorized, and governed by the statutes of the State of New Jersey, Title 18A, Education.

## Powers

The Board shall make, amend, and repeal rules not inconsistent with statutes or with the rules of the State Board of Education for its own government and the transaction of its business and for the government and management of the public schools and the public property of the school district and for the employment, regulation of, conduct, and discharge of its employees. The Board shall perform all acts and do all things, consistent with law and the rules of the State Board, necessary for the proper conduct, equipment and maintenance of the public schools of the district.

The Board of Education sees these as its required functions:

## 1. Legislative or Policymaking

The Board is responsible for the development of policy and for the employment of a Superintendent who shall carry out its policies through the development and implementation of regulations.

## 2. Appraisal

The Board is responsible for evaluating the effectiveness of its policies and their implementation.

## 3. Educational Planning

The Board is responsible for requiring and acquiring reliable information from responsible sources which will enable it and the staff to work toward the continuing improvement of the educational program.

## 4. Provision of Financial Resources

The Board has major responsibilities for the adoption of a budget which will provide the wherewithal--in terms of buildings, staff, materials, and equipment--to enable the school system to carry out its functions.

5. Interpretation

The Board is responsible for providing adequate and direct means for keeping the local community informed about the school and for keeping itself and the school staff informed about the wishes of the public. All planning, both that which is and that which is not related to the budget, needs to be interpreted to the public if citizens are to support the school program.

N.J.S.A. 18A:10-1; 18A:11-1; 18A:16-1;  
18A:20-1; 18A:27-4

Adopted: 28 May 2002

